

9 FAM 40.34 PROCEDURAL NOTES

*(CT:VISA-686; 02-01-2005)
(Office of Origin: CA/VO/L/R)*

9 FAM 40.34 PN1 SECURITY ADVISORY OPINION (SAO) PROCEDURES

(CT:VISA-686; 02-01-2005)

Requests for the Department's SAOs which are required by 9 FAM 40.34 Notes or are solicited at the discretion of the consular officer must be submitted *as a "VISAS DONKEY"*. SAO requests must provide all information known to post, including a complete citation of the CLASS entry (if any), as well as the consular officer's evaluation of the case and recommendation regarding eligibility. They should be directed to CA/VO/L/C, with FBI WASHDC" included as an action addressee. Once *an SAO has been submitted*, no visa may be issued until the Department's response has been received.

9 FAM 40.34 PN2 NOTATING FORM DS-230, APPLICATION FOR IMMIGRANT VISA AND ALIEN REGISTRATION IN NON-VOLUNTARY ASSOCIATION AND PAST MEMBERSHIP CASES

(CT:VISA-VISA; 02-01-2005)

When an immigrant alien has been found to benefit from the relief provided by INA 212(a)(3)(D)(ii) the action should be noted on *item 35* of Form DS-230, Application for Immigrant Visa and Alien Registration.

9 FAM 40.34 PN3 INA 212(A)(3)(D)(IV) WAIVER PROCEDURES

FAM 40.34 PN3.1 Waiver Applications Submitted Directly to DHS

(CT:VISA-686; 02-01-2005)

- a. Consular officers shall submit INA 212(a)(3)(D)(ii) waiver requests on Form I-601, Application for Waiver of Ground of Excludability making whatever adaptations are necessary; e.g., typing "INA 212(a)(3)(D)(iv)" in the space asking for the ground of ineligibility. Form I-601 should be sent directly to the office of the *Department Homeland Security (DHS)* having jurisdiction over the consular post.
- b. For the location of *DHS* offices abroad and their respective areas of responsibility, (see 9 FAM Appendix N, Exhibit I.)

9 FAM 40.34 PN3.2 Responsibility of Consular Officers

(CT:VISA-342; 01-08-2002)

The consular officer shall interview the alien to establish that the finding of ineligibility is fully in accord with law and regulations and that the qualifying relationship exists. He or she should assist the alien in completing Form I-601, Application for Waiver of Ground of Excludability and in ensuring that the form contains complete and accurate information. The consular officer shall make every effort to process Form I-601 at the time of the formal denial of the visa.

9 FAM 40.34 PN3.3 Forwarding Form I-601, Application for Waiver of Ground of Excludability to Department of Homeland Security (DHS)

(CT:VISA-686; 02-01-2005)

- a. The consular officer shall forward the completed Form I-601, Application for Waiver of Ground of Excludability, and the prescribed fee (see instructions on form) to the appropriate *DHS* office together with the following attachments:
 - (1) The complete visa file including the applicant's Form I-130, Petition for Alien Relative, if any, or other evidence that the alien has a qualifying relationship with a U.S. citizen or permanent resident alien;
 - (2) A memorandum from the consular officer summarizing the information developed from the visa interview pertinent to the alien's ineligibility and qualifications for a waiver; and
 - (3) A statement from the alien giving the name of the Communist or other totalitarian party to which he or she belongs or belonged, the reasons for joining, the dates of membership, any offices held, why

he or she remained a member and the degree to which he or she accepted the structure, goals, methods, and practices of the party, and, if he or she terminated the association, the date of termination and reasons for terminating.

- b. The consular officer shall inform the applicant of the disposition of the waiver request, the date on which Form I-601, was mailed to *DHS*, and the *DHS* office's address. The consular officer shall instruct the applicant to address any further inquiries directly to the designated *DHS* office.

9 FAM 40.34 PN3.4 Notating Department of Homeland Security (DHS) Waiver Action

(CT:VISA-686; 02-01-2005)

When a waiver is granted under INA 212(a)(3)(D)(iv), *DHS* will so notify the consular post. The post shall attach the notification to Form DS-230, Application for Immigrant Visa and Alien Registration, and note *DHS's* waiver approval on *Item 35* of Form DS-230. The post shall also note "212(a)(3)(D)(iv)" in the block provided for specifying waiver action on Form OF-155B, Immigrant Visa and Alien Registration.

9 FAM 40.34 PN3.5 Department of Homeland Security (DHS) Authority for Granting Waivers Discretionary

(CT:VISA-686; 02-01-2005)

The authority exercised by *DHS* under *INA 212(a)(3)(D)(iv)* is discretionary. In cases in which an eligible principal alien decides to precede an ineligible family member to the United States, the consular officer shall ask the principal alien to sign a statement that he or she has been informed that the exercise of *DHS's* discretionary authority cannot be guaranteed. (See 9 FAM 42.68 Regs/Statutes and 9 FAM 42.68 Notes.) Consular officers must not take the initiative in suggesting the separation of a family in order to place the ineligible alien in a position to apply for a waiver of his or her ineligibility.